

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT HALF INTERNATIONAL INC.,) 1:07-cv-00799-LJO-SMS
Plaintiff,)
v.) ORDER DENYING DEFENDANTS' MOTION
) TO MODIFY THE SCHEDULING ORDER
) (DOC. 162)
)
TRACI MURRAY, et al.,) ORDER DENYING DEFENDANTS' MOTION
Defendants.) FOR LEAVE TO FILE A FIRST AMENDED
) ANSWER (DOC. 163)
)
TRACI MURRAY, et al.,)
Counter-Claimants,)
v.)
)
ROBERT HALF INTERNATIONAL INC.,)
Counter-Defendant.)
)
)

Plaintiff is proceeding with a civil action in this Court.
The matter has been referred to the Magistrate Judge pursuant to
28 U.S.C. § 636(b) and Local Rules 72-302 and 72-303.

The motions of Defendants Traci Murray (Murray) and Barrett
Business Services, Inc. (BBS) to modify the scheduling order and
for leave to file a first amended answer, along with supporting
memoranda, declarations, and exhibits, were filed on September 3,
2008. Plaintiff filed opposition to both motions on October 10,

1 2008, including memoranda, declarations, exhibits, and an
2 appendix of authorities. A combined reply to both motions was
3 filed on October 17, 2008. By separate order, the hearing on the
4 motions was vacated, and the matters were submitted to the Court
5 for decision.

6 I. Background

7 The first amended complaint (FAC) filed February 15, 2008,
8 concerns alleged misappropriation by Defendant Murray, a former
9 employee of Plaintiff RHI, of confidential proprietary and
10 business information concerning clients and candidates in the
11 Micro J Plus database of RHI, an entity which in part specializes
12 in the placement of administrative and office support
13 professionals on a temporary and temp-to-hire basis; Defendant
14 Murray allegedly misappropriated and exploited confidential
15 information for the benefit of Defendant BBS, misappropriated
16 RHI's protected trade and service marks while pretending to work
17 for RHI but yet simultaneously working for competitor BBS,
18 breached her contractual obligations to RHI, solicited RHI's
19 clients after she left her employment with RHI, and with BBS
20 interfered with RHI's business relationships with its clients and
21 candidates. The FAC included claims for violation of the Lanham
22 Act, 15 U.S.C. § 1125(a), misappropriation of trade secrets in
23 violation of Cal. Civ. Code §§ 3426 et seq., violation of Cal.
24 Bus. and Prof. Code § 17200 et seq., breach of contract, breach
25 of implied covenant of good faith and fair dealing, interference
26 with contract, and tortious interference with contractual
27 relations and prospective economic advantage. Plaintiff seeks
28 compensatory, consequential, punitive, and exemplary damages as

1 well as preliminary and permanent injunctive relief.

2 Defendants BBS and Murray filed answers to the FAC on March
3 6, 2008.

4 Defendants and Counterclaimants Murray and BBS filed a
5 counterclaim on February 5, 2008, in which they alleged claims
6 against Counterdefendant RHI, including intentional interference
7 with prospective economic relationships by contacts,
8 interrogation, and harassment of BBS's customers by agents of
9 RHI; unfair business practices in violation of Cal. Bus. & Prof.
10 Code §§ 17200 et seq.; and declaratory relief regarding the
11 interpretation and scope of paragraphs 8 and 10 of Murray's
12 employment agreement with RHI. Counterdefendant RHI answered the
13 counterclaim on February 25, 2007.

14 II. Analysis

15 Rule 16(b) provides that a schedule shall not be modified
16 except upon a showing of good cause and by leave of the district
17 judge or, when authorized by local rule, by a magistrate judge.

18 Fed. R. Civ. P. 15(a) provides with respect to amendments
19 before trial that a party may amend its pleading once as a matter
20 of course before being served with a responsive pleading, or
21 within twenty days after serving the pleading if a responsive
22 pleading is not allowed and the action is not yet on the trial
23 calendar; in all other cases, a party may amend its pleading only
24 with the opposing party's written consent or the Court's leave.
25 The Court should freely give leave when justice so requires.

26 The Court will first consider whether pursuant to Rule 16(b)
27 good cause has been shown for amending the scheduling order.
28 Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 608 (9th Cir.

1 1992) (motion to amend pleading under Rule 15 as involving motion
2 to amend scheduling order); Eckert Cold Storage, Inc. v. Behl,
3 943 F.Supp. 1230, 1232-33 (E.D. Cal. 1996). "Good cause"
4 essentially means that scheduling deadlines cannot be met despite
5 the moving party's diligence; if the movant was not diligent,
6 then the inquiry should end; if the party was diligent, then the
7 existence or degree of prejudice to the opposing party may supply
8 additional reasons to deny a motion. Johnson, 975 F.2d at 609.

9 In considering whether or not the moving party has shown
10 that even with the exercise of due diligence, it cannot meet the
11 order's timetable, inquiry may be made into the moving party's
12 diligence and cooperation in achieving a workable scheduling
13 order, the party's showing that any actual or anticipated
14 noncompliance resulted from circumstances not reasonably
15 anticipated at the time of the scheduling conference, and the
16 party's diligence in promptly requesting modification once it
17 became apparent that compliance was not possible. Jackson v.
18 Laureate, Inc., 186 F.R.D. 605, 608 (E.D.CA 1999). Factors to be
19 considered include 1) the explanation for the failure to complete
20 the scheduled activity on time; 2) the importance of the
21 discovery or additional matter sought; 3) the potential prejudice
22 in allowing the additional matter sought; and 4) the availability
23 of a continuance to cure any prejudice. Reliance Ins. Co. v.
24 Louisiana Land and Exploration Co., 110 F.3d 253, 257-258 (5th
25 Cir. 1997) (holding no abuse of discretion to deny time to
26 supplement experts where there was no excuse, delay, and
27 prejudice). The diligence of the party seeking the extension is
28 an important factor. Eckert Cold Storage, Inc. v. Behl, 943

1 F.Supp. 1230, 1233 (E.D. Cal. 1996) (regarding amending a
2 schedule under Rule 16 with respect to amendment of pleadings).
3 Carelessness is not compatible with diligence and does not
4 justify granting relief. Johnson, 975 F.2d at 609.

5 Further, although Rule 16(b)(4) requires a showing of good
6 cause for amending pleadings after the scheduled deadline,
7 Coleman v. Quaker Oats Co., 232 F3d 1271, 1294 (9th Cir., 2000),
8 even if good cause is shown to amend the scheduling order, the
9 Court retains the discretion to refuse relief. Bradford v. DANA
10 Corp., 249 F.3d 807, 809 (8th Cir. 2001).

11 Here, the case has been pending since May 2007. The last
12 scheduled date for amending a complaint was February 18, 2008.
13 Discovery and expert discovery are, for almost all purposes,
14 complete and closed, the deadlines having run a few months ago;
15 nonexpert discovery ended on April 30, 2008, and expert discovery
16 in May 2008. (Doc. 36.) The time for dispositive motions has
17 passed. The pretrial conference is set for January 6, 2009, and
18 is fast approaching; the trial February 23, 2009. An additional
19 continuance does not appear to be an option.

20 There is no showing by Defendants of diligence. Defendants
21 delayed in beginning discovery until 2008. The Court has
22 previously found that the pendency of settlement discussions did
23 not provide a rational basis for delaying discovery in 2007 or
24 2008. The interpretation, scope, and enforcement of paragraphs 8
25 and 10 of the employment agreement with Murray are not new
26 issues; indeed, the enforceability of key portions of the
27 agreement was apparently before the Court on the present
28 pleadings because it was specifically addressed in connection

1 with the Defendants' motion for summary judgment five months ago.
2 (Order of June 25, 2008, on Defendants' motion for summary
3 judgment, pp. 14-19.) The failure of counsel to conduct research
4 concerning state preemption and/or to fail to discover case law
5 that preexisted the filing of the action appears to amount to
6 carelessness or neglect, and it does not appear to excuse
7 Defendants' failure to seek to amend the pleadings earlier.

8 The Court concludes that the moving parties have not shown
9 good cause for amendment of the scheduling order to permit
10 amendment of pleadings.

11 III. Disposition

12 Accordingly, it IS ORDERED that the motion of Defendants to
13 amend the scheduling order, and for leave to file first amended
14 answers, ARE DENIED.

15 IT IS SO ORDERED.

16 **Dated: October 22, 2008**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE